

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.03.2002

Coram :

THE HONOURABLE MR. JUSTICE P. SHANMUGAM

and

THE HONOURABLE MR. JUSTICE P. THANGAVEL

WRIT APPEAL No.321 of 1991 and SECOND APPEAL No.960 of 1992 and C.M.P. No.3326 of 1999

Cholan Roadways Corporation Ltd., Sole Appellant in
Kumbakonam, rep. by its .. W.A. 321/1999 and
Managing Director at 1st Appellant in
Kumbakonam. S.A. 960/1992

C.R.C. Limited,
rep. by its Branch Manager, .. 2nd Appellant in
Mayiladuthurai. S.A. 960/1992

Vs.

P.N. Karuppaiyan .. Respondent in both
W.A. & S.A.

PRAYER : Writ Appeal No.321 of 1991 preferred under Clause 15 of
the Letters Patent against the order of the learned single Judge of the
High Court dated 13.11.1998 made in Writ Petition No.2156 of 1991. Second
Appeal No.960 of 1992 preferred against the Judgment and Decree dated
30.10.1991 on the file of the Subordinate Judge, Mayiladuthurai in A.S.
No.31 of 1991 confirming the Judgment and Decree dated 8.8.1990 on the
file of the District Munsif, Mayiladuthurai in O.S. No.178 of 1988.

: ORDER

The Writ Appeal coming on for orders as to hearing on
this day, upon perusing the Grounds of appeal, the order of the High
Court made in the exercise of its Special Original Jurisdiction in the
writ petition, the judgment and decree of the courts below and all other
papers material to this case and upon hearing the arguments of

! Mr. Sanjay Mohan for M/s. S. Ramasubramanian Associates,
Advocate for the Appellants and of

^ Mr. K. Chandru, Senior Counsel for Mr. S. Sounthar,
Advocate for the Respondent,

and having stood over for consideration till this day, the Court passed the following Judgment :-

J U D G M E N T

P. SHANMUGAM, J.

Cholan Roadways Corporation Limited (hereinafter referred to as the Corporation), who were the defendants in the suit and respondents in the writ petition are the appellants herein.

2. One P.N. Karuppaiyan, plaintiff in the suit O.S. No.178 of 1988 in the District Munsif Court, Mayiladuthurai was an employee with Sri Rama Vilas Bus Service Limited, which was taken over by the Corporation, as a result of which the said Karuppaiyan was absorbed in the services of the appellant Corporation with continuity of service. The employee, while he was in his service with S.R.V.S., had declared his date of birth as 23.3.1930. In the official records of the Corporation also, his date of birth was entered as 23.3.1930. The Standing Orders for the employees of the Corporation, which came into force on 30.11.1976, provided for retirement of employees on their attaining the age of 58 years. The said employee was intimated that he would be superannuated on 31.3.1988 by the intimation of the corporation dated 15.2.1988. The employee filed a suit O.S. No.178 of 1988 on 22.3.1988 for a declaration that his date of birth is 25.2.1934 and consequently restraining the defendant Corporation by a permanent injunction from effecting the retirement of the employee's service on 31.3.1988 on the ground of his having attained the age of 58 years. The suit was decreed insofar as declaring his date of birth as 25.2.1934, but it was dismissed in reference to the relief of permanent injunction. On appeal by the Corporation, the Sub Judge, Mayiladuthurai in A.S. No.31 of 1991 confirmed the decree of the trial court. Thereafter, the employee filed Writ Petition No.2156 of 1991 in February 1991 for the issue of a Writ of Mandamus directing the respondent Corporation to reinstate him in service with backwages pursuant to the decree in O.S. No.178 of 1988 dated 8.8.1990. The Management filed Second Appeal No.960 of 1992 on 12.2.1992 against the decrees and judgments of the courts below. The learned single Judge, by an order in the writ petition dated 13.11.1998, ordered the Corporation to grant the service benefits to the employee on the basis of the decree of the civil court with regard to the date of birth declared. The Corporation has filed the Writ Appeal and as the learned single Judge has proceeded on the basis of the civil court decree to grant the relief sought for, both the second appeal as well as the writ appeal are before us.

3. The questions that arise for consideration in these appeals are as follows :

(i) Whether a civil suit in respect of age and the consequent

employment is maintainable in the light of the Standing Orders ?

(ii) Assuming that the suit is maintainable, whether the civil court and the learned Judge considered the issue in the light of the Standing Orders ?

4. The learned counsel Mr. Sanjay Mohan arguing on behalf of the Corporation submitted that the jurisdiction of the civil court is barred by virtue of the Standing Orders and an alternative remedy is available to an employee under the provisions of the Industrial Disputes Act. According to him, a declaration in reference to the age of an employee could not be pressed into service in relation to his employment, but could be used only for purposes other than employment. Assuming that the civil court has got jurisdiction, its judgment and decree cannot be sustained inasmuch as they have ignored the Standing Orders and other remedies available to the employee under the Industrial Disputes Act. He further submits that since the learned single Judge has proceeded only on the basis of the civil court decree, once it is found that the civil court has no jurisdiction to employment on the basis of a declaration of this nature, the order in the writ petition has to be set aside.

5. Learned senior counsel Mr. K. Chandru appearing on behalf of the respondent employee submitted that the Management cannot be permitted to argue questions which were not raised by them in the writ petition. Clause 31 of the Standing Orders provided that the age of the workman recorded with the Corporation shall not normally be sought to be altered. The record of date of birth, therefore, is not final and it is

open to an employee to seek for an alteration of the record. He also submitted that the Corporation has permitted such alterations as has been spoken to by P.W.2.

6. We have heard the counsel for the partise and considered the matter carefully.

7. The facts, as spoken to by the employee as P.W.1 that he joined S.R.V.S. in the year 1966 and that he had entered his date of birth with them as 23.3.1930 as per Ex.B.1 and that he joined the services of the Corporation in the year 1974 and that he had signed the service register in reference to Ex.B.2 to his date of birth which was again shown as 23.3.1930 and that they obtained the bio-data from the employee Ex.B.3 dated 23.9.1983, wherein he has written his date of birth as 23.3.1930, are not in dispute. The employee had initiated legal proceedings only after he received the intimation from the Corporation dated 1.6.1987, Ex.B.4, informing the employee of his superannuation. The further fact that the Standing Orders for the employees of Cholan Roadways Corporation Limited came into force from 30.11.1976 is also not in dispute. As per Clause 31 of the Standing Orders, the age of the workman as recorded with the Corporation at the time of his employment shall not normally be sought to be altered thereafter by the workman. However, if a workman produces proof to the satisfaction of the

Corporation within five years of joining service that the age given at the time of appointment is wrong, the Corporation may alter the age of the workman. Any application made for alteration of the age after five years from the date of entering into service in the Corporation will be summarily rejected. The clause further says that in the case of workmen who are already in service, they may, within a period of six months after the coming into being of these Standing Orders, move the management to revise the age, if there is any discrepancy. From the above, it is clear that the employee, at the time of entry into his service with his former employer S.R.V.S., entered his date of birth as 23.3.1930 and after the taking over of the firm by the Corporation in the year 1974, he did not seek for alteration of the date of birth. The Standing Orders came into force on 30.11.1976 and the employee had given his bio-data Exs.B.2 and B.3. Therefore, apart from not raising the discrepancy, if any, in reference to the age, he had also confirmed his date of birth in his communication made both in the year 1974 and 1983. Admittedly, the employee thought of seeking for alteration only after he was informed of his superannuation in the year 1988, just few days prior to his retirement.

8. If there is any dispute arising under the Industrial Disputes Act or its sister enactments such as Industrial Employment (Standing Orders) Act, they shall be adjudicated by any of the forums created by the Industrial Disputes Act, and the jurisdiction of the civil court in such matters is barred. The said question has been squarely answered in favour of the Corporation in RAJASTHAN STATE ROAD TRANSPORT CORPORATION VAS. KRISHNA KANT [1995 (5) S.C.C. 75]. Their lordships in that case held that the Standing Orders are binding upon both the employer and the employees and constitute the conditions of service of the employee. Their lordships held that the labour court and the industrial tribunal are the other adjudicatory bodies under the Industrial Disputes Act. If a dispute is referred to any of them, they are undoubtedly competent to go into it and decide the questions as to the application or interpretation of the certified standing orders insofar as they are necessary for the proper adjudication of the question that had arisen in the dispute. On the core question posed before the Supreme Court in that case as to whether the civil court's jurisdiction to entertain a suit with respect to disputes which amount to industrial dispute within the meaning of Industrial Disputes Act is barred, and in other words, where a dispute between the employer and the workman involves recognition or application or enforcement of certified standing orders, is the

jurisdiction of the civil court to entertain the dispute with respect to such disputes is barred, while summarising the conclusions, the lordships held in paragraph 35 of the judgment as follows :

"35.(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946 which can be called "sister enactments" to Industrial Disputes Act and which do not

provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of the Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to civil court is open."

"(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the civil court where recourse to civil court is open according to the principles indicated herein."

Applying the said principle, the Supreme Court in that case held that the suit for a declaration with the order terminating the service is illegal and invalid and for a further declaration that they must be deemed to have continued was held to be not maintainable in law.

9. In UNION OF INDIA VS. HARNAM SINGH (82 F.J.R. S.C. 301), the Supreme Court, in similar circumstances, held as follows :

"Held, on the facts of the case, that the date of birth of the respondent-employee, which was recorded at the time of his entry into service as 20th May, 1934, had continued to exist, unchallenged between 1956 and September, 1991, for almost three and a half decades. The respondent had the occasion to see his service book on numerous occasions. He signed the service book at different places at different points of time. Never did he object to the recorded entry. The same date of birth was also reflected in the seniority lists which the respondent had admittedly seen, as there is nothing on the record to show that he had no occasion to see the same. He remained silent and did not seek the alteration of the date of birth till September 1991, just a few months prior to the date of his superannuation. Inordinate and unexplained delay or laches on the part of the respondent to seek the necessary correction would in any case have justified the refusal of relief to him. Even if the respondent had sought correction of the date of birth within five years after 1979, the earlier delay would not have non-suited him but he did not seek correction of the date of birth during the period of five years after the incorporation of Note 5 to FR 56 in 1979, either. His inaction for all this period of about thirty-five years from the date of joining service, therefore, precludes him from showing that the entry of his date of birth in service record was not correct. His application for correction of date of birth entered in the service book in 1956, for the first time made in September 1991, was hopelessly belated and did not merit any consideration."

Their lordships also held that in the absence of any provision in the

rules for correction of the date of birth, the general principle of refusing relief on the ground of laches or stale claims is generally applied by the courts and tribunals. It was held that it is competent for the authority to fix a time limit in the service rules, after which no application for correction of date of birth of Government servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time so fixed cannot claim, as a matter of right, the correction of his date of birth even when he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly, but it has to be applied with all its rigour and the courts and tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire.

10. A Division Bench of this court in *S. ALAMELU VS. THE SUPERINTENDING ENGINEER, SOUTH ARCOT ELECTRICITY SYSTEM (S), VILLUPURAM* [1999 (II) L.L.J. 96], has taken the view that the certified Standing Orders will prevail over on other service rules and regulations.

11. The learned senior counsel for the respondent referred to the judgment of the Supreme Court in *CO-OPERATIVE CENTRAL BANK LIMITED VS. ADDITIONAL INDUSTRIAL TRIBUNAL, ANDHRA PRADESH, HYDERABAD* [1969 (II) L.L.J. 698] wherein it has been held that though the Standing Orders are binding between the employers and the employees of the industry governed by these Standing Orders, they did not have such force of law as to be binding on the industrial tribunals adjudicating industrial disputes. Industrial Tribunals have the right even to vary contract of service between the employer, which jurisdiction can never be exercised by a civil court or a Registrar acting under the Co-operative Societies Act and the circumstances that in getting the relief, the Tribunal had to vary the special bye-laws infers that the tribunal does not have the right to grant the relief sought for in the reference. Their lordships held that the relief could be granted only by the industrial tribunal and could not fall within the scope of the powers of the Registrar dealing with the dispute under Section 16 of the Act. This judgment will not be helpful to the respondent. The further contention that the question was not raised in the writ petition cannot be correct. The learned Judge refers to Clause 31 of the Standing Orders and it was held that it is not a complete bar in making any application either before the management or before the competent court. It was held by the learned Judge that the civil court was aware of the condition prescribed in Standing Order 34(1) and after considering the objection, the civil court has granted the decree and therefore, the employee is entitled to the other service benefits on the basis of the decree and the civil court with regard to the date of birth declared. We are unable to accept the reasoning of the learned Judge.

12. The Subcourt, in A.S. No.31 of 1991 having held that the rules and regulations framed by the Corporation and Ex.B.5, the Standing Orders have got statutory force, has overlooked and failed to apply the same. Once it is found that the Standing Orders are binding, then the

civil court ought not have entertained the suit. The appellants have raised this issue specifically in their written statement and an issue has been framed as to whether the declaration and injunction as prayed for by the plaintiff in the suit can be granted. The trial court noted the plea of the Corporation that as per their rules, there is no scope for alteration of date of birth. The trial court held that as per general law, the plaintiff has a right to get a declaration of his date of birth. The trial court therefore refused to grant the decree to prevent the retirement of the employee. The trial court specifically observed as follows:

"No relief is granted to the plaintiff to prevent him from getting retired on 31.3.1988 from the defendant firm. Therefore, the defendant firm is not given any order in this case as far as the date of retirement of the plaintiff is concerned."

In effect, the civil court has upheld the binding force of the Standing Orders and the clause concerning the alteration of date of birth and has refused to grant the relief of permanent injunction. Therefore, assuming for the sake of argument that there is a decree, it can only be in reference to the date of birth of the employee, but there cannot be a consequential direction to the Corporation to treat the employee under their service on the basis of the said declaration. The employee was bound by the Standing Orders and has confirmed his date of birth by Exs.B.2 and B.3 and he had not sought for alteration within the period specified and he had not given any reason for the belated claim of his service benefits on the basis of the alleged altered date of birth. That apart, the civil court has not directed that the declaration will have a binding force insofar as his employment is concerned. The service conditions of the employee are governed by the Standing Orders and if there is any dispute in reference to his employment, by virtue of Section 13-A of the Standing Orders Act, the interpretation relating to his service conditions has to be raised before the Labour Court and it cannot be before a civil court. Looked at from any angle, the employee cannot get the relief sought for in the writ petition. The civil court has failed to consider that insofar as the employee is concerned, admittedly, he had not adhered to the procedure which is binding and which has to be followed in case of date of birth. Insofar as the Corporation is concerned, the question has attained finality after Exs.B.2 and B.3 and it cannot be open insofar as the service between the Corporation and the employee is concerned.

13. The plea of similar treatment without finding out the circumstances under which a relief was granted cannot be applied as binding. Assuming it to be so, any wrong order given to one person without reference to the rules cannot be a precedent to be followed or enforced.

14. For all the above reasons, we hold that the order of the learned single Judge cannot be sustained and the writ appeal is allowed. Insofar as the second appeal is concerned, we hold that the declaration

relating to the date of birth of the employee cannot have any effect insofar as the service of the respondent-employee with the Corporation is concerned. The second appeal is ordered as above.

Index : Yes (P.S.M.J.) (P.T.J.)

06..03..2002 Internet : Yes

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To

1. Cholan Roadways Corporation Ltd.,Kumbakonam, rep. by its Managing Director at Kumbakonam.

2. C.R.C. Limited, rep. by its Branch Manager, Mayiladuthurai.

3. The Subordinate Judge, Mayiladuthurai.

4. The District Munsif, Mayiladuthurai.

P. SHANMUGAM, J. and P. THANGAVEL, J.

Pre-delivery Judgment in W.A. No.321 of 1999 and S.A. No.960 of 1992.
Delivered on 06..03..2002

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